

EXHIBIT 1

Part 1 of 2

COPY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY**

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LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
DEPUTY

In re

BRANDEE TRIPP,

Petitioner,

For Writ of Habeas Corpus.

Case No.: HC5015

**PETITION FOR WRIT OF HABEAS CORPUS
MEMORANDUM OF POINTS & AUTHORITIES
EXHIBITS A-F**

ADRIAN T. WOODWARD, Esq.
Law Offices of Adrian T. Woodward
State Bar # 184011
4000 Long Beach Boulevard
Long Beach, CA 90807
Telephone: (562) 424-4880

Counsel for Petitioner
BRANDEE TRIPP

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ADRIAN T. WOODWARD, Esq.
Law Offices of Adrian T. Woodward
State Bar # 184011
4000 Long Beach Boulevard
Long Beach, CA 90807
Telephone: (562) 424-4880

Counsel for Petitioner
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BRANDEE TRIPP,		PETITION FOR WRIT
Petitioner,		OF HABEAS CORPUS;
For Writ of Habeas Corpus.		MEMORANDUM OF POINTS & AUTHORITIES; EXHIBITS A-F

Based on the facts, grounds, authorities and exhibits herein, petitioner respectfully applies for issuance of a writ of habeas corpus vacating Governor Schwarzenegger's action of October 14, 2004, that reversed the May 17, 2004 decision by the Board of Prison Terms (BPT) granting petitioner parole (the second time petitioner's parole grant has been reversed by a Governor), reinstating BPT's decision, and directing the Department of Corrections to release petitioner on parole forthwith and to credit her parole term with the time during which she has been confined in prison in excess of her prison term calculated by BPT at her May 17, 2004 parole hearing, after its reduction by appropriate postconviction credit.

Custody

Petitioner is confined by the Department of Corrections (CDC) at California Institution for Women, Corona, California, Dawn Davison, Warden.

Jurisdiction and Venue

This Court has original jurisdiction to issue the writ (Cal.Const., Art. VI, § 10; Pen.C. § 1508), and venue to adjudicate the petition (petitioner was prosecuted, and her parole will occur, in Monterey County). See *In re Sena* (2001) 94 Cal.App.4th 836; *Griggs v. Superior Court* (1976) 16 Cal.3d 341.

Administrative Remedies

There is no administrative remedy for an unconstitutional action by a governor reversing a BPT grant of parole.

PETITIONER'S OFFENSE, PRIOR RECORD AND COMMITMENT

On February 11, 1981, pursuant to her guilty plea to second degree murder, petitioner was sentenced by the Monterey County Superior Court, case no. CR7639, to 15 years-to-life for the July 3, 1979, murder of Tameron Carpenter. (Exhibit A.) At the time of the offense, petitioner was 20 years old and had no prior criminal record. (Exhibit B, pp. 10-11, 23-25.)

Randy Cook and Hilton Tripp, petitioner's husband, kidnapped the victim, age 10, in order to receive \$1,000 promised by William Record (Ruckert), petitioner's stepfather, to prevent the victim from testifying against Record in a child molestation case. Cook and Hilton Tripp eventually choked, killed, and buried the victim. Petitioner, as revenge against her stepfather who had sexually molested and physically abused her from age 7 to age 19, planned to keep Tamara's whereabouts secret, then to release her to testify against him. She sent Tamara to the store, where she would be abducted by her husband and Cook. Petitioner, who did not plan or anticipate a murder, has since prior to her commitment accepted responsibility and admitted her role in the offense. (Exhibit B, pp. 10-21, 23-27.)

Petitioner was committed to prison on February 18, 1981. Her minimum eligible parole date (MEPD)¹ lapsed on May 6, 1989. (Exhibit B, p.1.) The maximum prison term prescribed by the regulations for the facts of petitioner's particular second degree murder lapsed in 1992.² The net prison term set by the 2004 BPT parole hearing panel, 131 months, when reduced by 29 months of pre-sentencing credits, lapsed in 1990. (Exhibit B, p. 69.)

PETITIONER'S POST-CONVICTION RECORD

Petitioner has maintained an exemplary, disciplinary-free record for 16 years. Her last disciplinary infraction occurred in 1988 (failure to report to work). Her work supervisors' reports have been consistently excellent. Her classification score (19) is the lowest attainable for a lifer. Petitioner earned her GED and became certified in two vocations, Word Processing and Forklift Operation. She has successfully completed all applicable therapy and self-help programming, including attendance in AA and NA since 1988, Women Against Abuse, Relapse Prevention, Breaking Barriers, Drug Awareness Counseling, New Beginnings, SOS, Inmate Assistance Module, American Bible Program, and Arts in Corrections. Petitioner's file is replete with laudatory chronos for her conduct, work, and reform from custody and free staff, and for her charitable work. Her parole plans, repeatedly approved by BPT, include offers of employment, a residence, and substantial family and community support. BPT has consistently acknowledged petitioner's exemplary record of good conduct, work, reform, and rehabilitation. See exhibit A, pp. 65-68; exhibit E.

¹ The minimum eligible parole date (MEPD) is defined as "the earliest date on which an ISL or life prisoner may be released on parole." (15 CCR § 2000(b)(66).)

² 15 CCR § 2403(c) prescribes a maximum base term of 18 years (subsec. 11A: victim had relationship to prisoner but not directly assaulted by prisoner), to be reduced by 64 months of postconviction credit (4 months for each of 16 disciplinary-free years of imprisonment per 15 CCR § 2410), resulting in a netmaximum prison term of 12 years, 8 months, which must be further reduced by deducting 875 days of pre-sentencing Pen.C. §§ 2900.5, 4019 credit (exhibit A), resulting in a parole date that lapsed in 1992.

PETITIONER'S FORENSIC EVALUATIONS;
ASSESSMENT OF PAROLE RISK

In recent years petitioner has been uniformly evaluated to pose a low, if any, parole risk. In the current psychological evaluation, Peter Hu, M.D., a forensic psychiatrist, concluded that petitioner has accepted responsibility for her offense, has appropriate insight and remorse, and would not be dangerous if released to the community. (Exhibit D, p. 3.) Two years earlier, a different forensic psychiatrist, Robert D. McDaniel, M.D., reached the same conclusions. (Exhibit D, pp. 5-6.) A like assessment occurred in 1999. (Exhibit D, pp. 13-14.)

PAROLE PROCEEDINGS

1986-2001

At 12 parole hearings between 1986 and 2001, BPT panels found petitioner unsuitable for parole, based largely or entirely on her commitment offense, and therefore refused to set her prison term or a parole date.³ At her 10 hearings since 1990, the panels scheduled petitioner's subsequent hearing in one year, the shortest interval permitted.⁴

Petitioner's First Parole Grant and Reversal (2003)

On November 6, 2002, a BPT panel unanimously found petitioner suitable for parole and set her prison term and a parole date. The panel's grounds for suitability were similar to those set forth at petitioner's 2004 hearing, detailed *infra*.

³ The parole statutes and regulations prescribe a 2-step process: The panel first determines whether a lifer is suitable or unsuitable for parole based on a preponderance of the evidence addressing the issue of whether parole would pose "an unreasonable risk of danger" to "public safety." The panel proceeds to the second step of determining the length of the prison term and a parole date for lifers it finds to be suitable for parole. Pen.C. § 3041(b); 15 CCR §§ 2401, 2402(a), (b).

⁴ Petitioner's counsel will provide, upon the Court's request, certified copies of her past parole hearings transcripts. The transcript of petitioner's 2004 parole hearing is attached as exhibit B.

1 Predictably, on April 4, 2003, former Governor Gray Davis, exercising his
2 authority under Pen.C. § 3041.2 and Art. V, § 8(b) of the California Constitution,
3 reversed the parole grant, based mainly on petitioner's commitment offense.
4

5 **Petitioner's Second Parole Grant (2004)**

6 On May 17, 2004, a new panel unanimously found petitioner suitable. The
7 panel addressed at length the findings stated by Governor Davis for his reversal of the
8 previous panel's grant of parole, and read his report into the record. See exhibit B, pp.
9 29-38, 48-54. The District Attorney did not oppose parole, nor did members of the
10 victim's family. The panel explained in detail the grounds for its finding of suitability:
11

12 The Panel reviewed all information received from the public
13 and relied on the following circumstances in concluding that
14 the prisoner is suitable for parole and would not pose an
15 unreasonable risk of danger to society or a threat to public
16 safety if released from prison.

17 The prisoner, while imprisoned, has enhanced her ability to
18 function within the law upon release through participation in
19 educational programs. She has obtained a GED [and] a
20 vocational certificate in forklift operation and also in
21 vocational word processing . . . She's been in AA and NA
22 since . . . 1988. She's been in the SOS program. She's taken
23 the Women Against Abuse program, the American Bible
24 Academy, Arts and Correctional Music Program, the Relapse
25 Prevention program, the HIV AIDS Prevention program, and
26 Breaking Barriers. Her institutional job assignment is in the
27 PIA working as a label mechanic operator since 2000, and
28 she has received satisfactory work reports in that assignment.

The prisoner lacks a significant criminal history of violent
crime. Because of maturation, growth, greater understanding,
and advanced age has reduced the probability of her
recidivism.

1 The prisoner has realistic parole plans, which includes a job
2 offer and family support . . . I would rate the parole plans as
3 superior. She has a place to live at the Casa Solano, which is
4 in Grover Beach [and] a [2] job offer[s].

5 The prisoner has maintained close family ties while in prison
6 by letters and visits [and] has maintained positive
7 institutional behavior, which indicates significant
8 improvement in self-control. She has had no 115s
9 [disciplinary infractions] since 1988 . . . So we feel that she
10 has a good disciplinary record while in custody.

11 Prisoner shows signs of remorse. She has indicated that she
12 understands the nature and the magnitude of the offense and
13 accepts responsibility for her criminal behavior and has a
14 desire to change towards good citizenship.

15 The most recent psychological report, authored by Peter Hu .
16 . . a staff psychologist . . . is favorable. He states,

17 The inmate has not been dangerous within a
18 controlled setting, and I do not believe that she will
19 be dangerous if released to the community. The
20 inmate has gained a healthier respect for the rights
21 and privacy of others and appears to have followed
22 diligently in the rules and regulations here at the
23 institution. The inmate has been able to keep her
24 pathological characteristics in control and she has
25 obtained a certain level of peace and contentment
26 with herself. Risk factor, as always, would be if
27 she ever attempted to resort to acts of criminality,
28 though given her peace and contentment, I do not
suspect that to be the case.

29 The psych evaluation prior to that was prepared on 9/10 of
30 '99 by Robert D. McDaniels, who's also a staff psychiatrist.
It is favorable. He states,

1 The inmate has not been dangerous within a
2 controlled setting. I do not believe she would be
3 dangerous if released to the community. Her
4 orientation was obviously changed over many
5 years, as reflected by a good work ethic and her
6 involvement within the institution. A significant
7 risk factor, as always, would be appropriate parole
8 plans. However, these have been deemed viable in
9 the past.

10 (Exhibit B, pp. 65-68.)

11 The panel set petitioner's base term at the mid-term of 204 months prescribed by
12 the regulations for the specific factors of her offense including her relationship with the
13 victim and the fact that she did not participate in the killing. The panel deduced 73
14 months of postconviction credit as prescribed in the regulations, resulting in a total
15 period of confinement of 131 months. (Exhibit B, p. 69.)

16 Parole conditions imposed by the panel included abstinence from alcohol and
17 substance abuse therapy and testing. (Exhibit B, p. 69.)

18 In closing, the panel commented:

19 Couple of comments. I noticed that when you talked
20 About . . . your involvement in the crime, you were very
21 emotional. And I think that is a consideration. I also
22 took into consideration the fact that you've been denied
23 and still kept programming. You didn't give up. There's
24 a lot of people in the institution that will depend on you
25 because people who go out and make mistakes and
26 have to come back, it reflects on them. We as panel
27 members say, where did I go wrong. So you've got a
28 lot of things resting on you. But I want to say that I
didn't give you the date. You earned it. You've done a
good job in here. So good luck in the future. (Exhibit B,
pp.70-71.)

The Governor's Reversal of Petitioner's Second Parole Grant

On October 11, 2004, Governor Schwarzenegger reversed petitioner's second grant of parole, concluding, as always, "I believe she would pose an unreasonable threat to public safety if released from prison at this time." (Exhibit C, p. 3.) The sole ground stated by the Governor for that conclusion was the 25-year old commitment offense itself, described by the Governor as "premeditated," "monstrous," and demonstrative of "exceptional depravity and an utterly callous disregard for human life and suffering" that petitioner, who was in a "position of trust . . . could have prevented." (Exhibit C, pp. 2-3.)

REQUIREMENTS OF DUE PROCESS; STANDARD OF REVIEW

1. State parole statutes and regulations bestow on life prisoners a liberty interest in parole protected by due process. (*McQuillion v. Duncan* (9th Cir.2002) 306 F.3d 895, 901-903 [*"McQuillion"*]; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 621 [*"Rosenkrantz"*]).

2. Said liberty interest is heightened considerably in the case of an inmate like petitioner who has already been granted a parole date. (*McQuillion*, 305 F.3d at 903.)

3. Petitioner's liberty interest required her being found suitable for, and granted parole because, after her minimum eligible parole date lapsed, she was evaluated not to pose an unreasonable risk of danger to public safety. (Pen.C. §3041(a); 15 CCR §§ 2280, 2281(a).) Accordingly, BPT panels found petitioner suitable and set parole dates at her successive 2002 and 2004 hearings.

4. Although the commitment offense may justify a finding of unsuitability in some cases, it cannot serve as the basis for *repeated* or *interminable* parole denials. (*Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 910, 916 [*Biggs*]; see *In re Ramirez* (2000) 94 Cal. App.4th 549, 569-570.)

5. The BPT panel was required to base its findings on a weighing of all relevant, reliable evidence before it. (*Rosenkrantz*, 29 Cal.4th at 655; 15 CCR § 2281(b); *In re*

1 *Minnis* (1972) 7 Cal. 3d 639, 646; *Ramirez*, 94 Cal.App.4th at pp. 569-672.)

2 6. Governors are bound by the same statutory and regulatory constraints that
3 bind parole determination by BPT. A governor's decision reversing a BPT parole
4 grant must be based on the governor's personal review of the same evidence that the
5 BPT panel considered and upon the same factors that the BPT panel was required to
6 consider. (*Rosenkrantz*, 29 Cal.4th at p.676; Cal.Const., Art.V, §8(b).)

7 7. Due process requires that the grounds set forth by a governor for a decision
8 reversing a BPT parole grant must be supported by at least some reliable, relevant
9 evidence. (*Rosenkrantz*, 29 Cal.4th at p. 658.)

10 8. *In re Dannenberg* (2005) __ Cal.4th __, 2005 WL 170692, will undoubtedly
11 be cited by respondent in defending petitioner's constitutional claims. Although the
12 Court in *Dannenberg* broadened BPT's discretion to base parole unsuitability on
13 factors of the commitment offense, the Court did not extinguish a reviewing court's
14 duty to find some reliable, relevant evidence in the record to support each ground
15 stated for parole unsuitability, nor did it condone the Executive Branch's use of static
16 commitment offense factors to *interminably* preclude parole, untenably converting
17 petitioner's legislatively prescribed, judicially imposed sentence of 15 years to life
18 with the possibility of parole, defined by the parole statute as a probability of parole
19 (Pen.C. § 3041(a): panel "shall normally grant a parole release date"), to life without
20 any possibility of parole.

21 9. As set forth by the controlling authorities cited *infra*, this Court and, more
22 importantly, the Governor, a member of the Executive Branch, absolutely bound by the
23 terms of petitioner's plea agreement, are constitutionally and contractually prohibited
24 from imposing a new, extremely more onerous level of gubernatorial review to reverse
25 her parole grant, and from precluding her parole by re-characterizing her
26 commitment offense as a premeditated first degree murder after striking that offense as
27 a condition of the plea and after petitioner had fully performed her end of the bargain.
28

PETITIONER'S CONSTITUTIONAL CLAIMS

I. BECAUSE THE GOVERNOR'S FINDING, THAT PETITIONER'S PAROLE POSES "AN UNREASONABLE RISK OF DANGER TO SOCIETY," AND, THEREFORE, THAT PETITIONER IS UNSUITABLE FOR PAROLE, IS INAPPOSITE TO THE RECORD AND SUPPORTED BY NO EVIDENCE WHATSOEVER, PAROLE REVERSAL ABROGATED DUE PROCESS AND PETITIONER'S LIBERTY INTEREST IN PAROLE

The Governor's basis for reversing petitioner's parole grant was a boilerplate recitation that her parole poses an "unreasonable threat to public safety if released from prison at this time." (Exhibit C, p. 3.) The sole ground stated by the Governor in support of that conclusion, the commitment offense, is detailed *infra*. Parole denial on that basis abrogated due process because *no* evidence whatsoever supports the notion that petitioner's parole poses an unreasonable risk and because *all* evidence in the record, which the Governor did not review, that addresses petitioner's current parole risk and potential danger to public safety, assesses these factors as low. Not a speck of evidence supports "the Governor's" contrary recitation.

The only reliable evidence of petitioner's current dangerousness and parole risk, her forensic psychiatric and correctional evaluations, are uniformly parole-favorable and assess these factors to be low. For several years, petitioner has been consistently evaluated to pose a low parole risk. Last year Peter Hu, M.D., a forensic psychiatrist, concluded that petitioner has accepted responsibility for her offense, has appropriate insight and remorse, and would not be dangerous if released to the community. (Exhibit D, p. 3.) Two years earlier, Robert D. McDaniel, M.D., reached the same conclusions (exhibit D, pp. 5-6), as was the case in 1999. (Exhibit D, pp. 13-14.)

1 *All* forensic documentary evidence addressing petitioner's level of danger and
2 parole risk developed over the past 6 years places her in the lowest category. *No*
3 evidence supports Governor Schwarzenegger's contrary notion that petitioner's parole
4 poses "an unreasonable threat." Parole reversal based on such a whim abrogated due
5 process and petitioner's liberty interest in parole. See *In re Smith* (2003) 109 Cal.App.
6 4th 489, 506-507 [no evidence supporting Governor Davis' "unreasonable risk"
7 grounds; parole ordered].
8

9 **II. THE GOVERNOR'S ACTION VIOLATED DUE PROCESS BECAUSE IT WAS**
10 **BASED ON INCORRECT "FACTS" AND BREACHED THE EXPRESS TERMS**
11 **OF HER PLEA BARGAIN**

12 The Governor's sole ground for his "unreasonable risk"/parole unsuitability
13 finding, petitioner's commitment offense, was legally untenable because it was based
14 on incorrect "facts" and re-classification of petitioner's offense as a first degree
15 murder in violation of her plea bargain.
16

17 **1. The Governor Relied on Incorrect Facts**

18 The Governor stated petitioner, her husband, and Cook "decided to kidnap *and*
19 *kill*" the victim, that petitioner "helped plan the kidnap *and murder*." (Exhibit C, p. 2;
20 emphasis added.) No such testimony was elicited against petitioner, who was not tried.
21 In the perpetrators' trials, a single witness testified he overheard the three defendants
22 mention a possible killing. Petitioner did not contemplate murder or agree to do more
23 than what she did, help set up the kidnapping by sending the victim to the store. She
24 intended, as revenge against her stepfather who had sexually and physically abused her
25 for 12 years, to keep Tamara's location secret until his trial and then insure her
26 testimony against him. Petitioner was shocked and dismayed to learn of the victim's
27 death. (Exhibit B, pp. 12-23.) Had petitioner known that Tameron would be harmed,
28

1 she would not have participated even in the revengeful act. Petitioner did not
2 participate in, plan, anticipate, or contemplate a murder; she participated in a
3 kidnapping. Notably, the prosecutor's office, although notified, did not submit
4 documents or attend petitioner's hearing to claim otherwise. Contrary to the
5 Governor's notion, petitioner's statements are not "inconsistent." For more than 25
6 years she has consistently maintained that although murder may have been discussed
7 at one point, it was not in the plan that she helped initiate or anticipated by her.

8 *Accordingly, reversal of petitioner's parole grant based on the notion that she*
9 *planned or premeditated a murder was arbitrary and abrogated due process.*

10
11
12 **2. Basing Parole Reversal on a Re-characterization of the Offense as a First**
13 **Degree Murder Abrogated Due Process and Breached the Express Terms of**
14 **Petitioner's Plea Bargain**

15
16 In exchange for the State's promise to determine her offense to be second degree
17 murder and her sentence to be that for second degree murder, petitioner waived her
18 constitutional rights, pled guilty to that offense, and testified truthfully as promised
19 against the two remaining defendants. In entering into the plea bargain, petitioner
20 understood and relied on the fact that she would be eligible for parole around 1989 and
21 that her parole suitability would be determined only by BPT.

22 The Governor's sole ground for reversing petitioner's parole grant was the
23 commitment offense, re-cast by the Governor as a first degree murder. The Governor
24 stated that petitioner "premeditated" the offense, that she "planned" the victim's
25 murder. (Exhibit C, p. 2.) Aside from the falsity of that finding, reversal on that basis
26 violated the express term of petitioner's plea agreement that the offense was *not*
27 premeditated, *not* first degree, and did *not* involve the planning of a murder on her part.
28

1 Whether "some evidence" exists that petitioner planned or premeditated a
2 murder is also irrelevant because the Due Process Clause prohibits the State from
3 reneging on its promise. The Legislative Branch has decreed a different and less
4 severe punishment for second degree murder than that prescribed for first degree
5 murder. When the Executive Branch enters into a plea bargain with a defendant it
6 binds itself, as when enacting a contract, to the terms of that plea. If the principal term
7 of a plea is that the murder be designated as being of the second degree, then, plainly,
8 it would be a violation of that plea for a different division of the Executive Branch to
9 unilaterally re-characterize the appropriate punishment. The Judicial Branch, by
10 accepting a plea reducing a first degree murder to a second degree, places a
11 constitutional imprimatur upon the contract and is available to either party seeking
12 redress. See *People v. Cunningham* (1996) 49 Cal.App.4th 1044, 1047: "A plea
13 agreement is, in essence, a contract between the defendant and the prosecutor to which
14 the court consents to be bound."

15 Sometimes it is the defendant who breaches the plea. In *People v. Collins*
16 (1996) 45 Cal.App.4th 849, 863, when the defendant breached the plea bargain by
17 refusing to testify as promised against a co-defendant, the Court of appeal held: "The
18 reciprocal nature of a plea bargain agreement mandates that either party to the
19 agreement be entitled to enforce the agreement in a situation where the party is
20 deprived of the benefit of the bargain." Usually, all that is required of a defendant is to
21 waive his or her constitutional rights and accept immediate punishment. See *Newton v.*
22 *Rumery* (1987) 480 U.S. 386, 394: "When the State enters a plea bargain with a
23 criminal defendant, it receives immediate and tangible benefits, such as promptly
24 imposed punishment without the expenditure of prosecutorial resources." After a
25 defendant has performed his or her part of the bargain the remedy of specific
26 performance of the State's obligation exists. (*People v. Leroy* (1984) 155 Cal.App.3d
27 602, 606; *People v. Mancheno* (1982) 32 Cal.3d 855, 860.)
28

1 Petitioner gave the State much more than the usual acceptance of immediate
2 punishment. She agreed to testify against the codefendants. In doing so, petitioner
3 substantially assisted the prosecutor and State in securing their convictions, and
4 exposed herself to the fright and peril of a “rat jacket” that has persisted throughout 25
5 years of her imprisonment to date.

6 The government insures a defendant that her punishment will be imposed as
7 contemplated at the time of the plea. Although remedying the Governor’s breach of a
8 plea agreement may vindicate the rights of a disrespected member of society, it focuses
9 the Court’s resources on the honor of the government and the fair administration of
10 justice. Fundamental precepts of due process are abrogated when, in order to extract
11 additional punishment from an agreement entered by a defendant, the State increases
12 the punishment by increasing the degree of the offense pled.

13 Respondent may argue that it was never an explicit term of the plea that the
14 Governor would be bound by the prosecutor’s and plea court’s concession that the
15 offense must be designated as second degree murder. What, then, was the purpose of
16 the plea bargain? Petitioner, who had insisted on a jury trial and had valid defenses
17 available, certainly did not give or intend to give the State everything she had fought
18 against theretofore. It would be absurd to believe that when a defendant enters into a
19 plea to second degree murder she does so in order to have her punishment fixed as that
20 contemplated for first degree murder. Please see the recent BPT case of *Brown v.*
21 *Poole* (9th Cir. 2003) 337 F.3d 1155, citing *INS v. St. Cyr* (2001) 533 U.S. 289, 322-
22 323, 325 [inferring based on general analysis of what would motivate defendants to
23 accept plea agreements that particular “defendant ‘almost certainly’ relied on
24 availability of particular relief”].
25
26
27
28

1 It was not a term of the plea that a governor would have the power of
2 nullification.⁵ No defendant at the time would have entered such a plea, and defense
3 counsel for such a defendant would have been derelict for not warning the client of the
4 illusory nature of such a “deal,” which would betray the District Attorney’s ethical
5 duty, as a representative of the state, to conduct the state’s business fairly and honestly.
6 See *In re Ibarra* (1983) 34 Cal.3d 277, 289 [illusory concessions offered by state in
7 plea bargain constitute “a species of fraud”]; *Santabello v. New York* (1971) 404 U.S.
8 257, 261 [plea bargain contracts “presuppose fairness in securing agreement between
9 an accused and a prosecutor”].

10 The Governor may argue, as suggested recently in *Dannenberg*, 2005 WL
11 170692, that even if the offense must be designated as second degree murder, he must
12 still be able to decide whether it was a particularly egregious example of that offense
13 or whether petitioner’s role was more than the minimum necessary to constitute its
14 elements and, for that reason, deny parole. The notion is tantamount to a claim to
15 unfettered discretion regardless of the terms of the plea bargain. Further, an inability
16 to define the offense as a more serious, first degree murder, does not deprive the
17 Governor of the use of any of BPT’s other codified factors indicating parole
18 unsuitability, e.g., serious prison misconduct, unviable parole plans, or failure to
19 reform or participate in therapy or other programming.

20 Requiring her parole decisions to be based on the crime being second degree
21 murder was the *only* benefit petitioner would receive from her plea. When, as here, the
22 only basis for a Governor’s jurisdiction over petitioner is her plea bargain, her due
23 process and liberty interest rights compel a Governors’ strict compliance with its
24 terms, which absolutely precluded the actions of Governors Davis and Schwarzenegger
25 that have twice extended her prison term. On this issue, the State’s highest court has
26 explained:

27
28 ⁵ The Governor’s authority to modify and reverse BPT parole grants did not exist until 1989, an issue detailed in the following subsection.

1 It would be improper and unfair to permit the sentencing
2 court to consider any of the facts underlying the dismissed
3 count for purposes of aggravating or enhancing defendant's
4 sentence. Count three was dismissed in consideration of
5 defendant's agreement to plead guilty to counts one and two.
6 Implicit in such a plea bargain, we think, is the understanding
7 (in the absence of any contrary agreement) that defendant
8 will suffer no adverse sentencing consequences by reason of
9 the facts underlying, and solely pertaining to, the dismissed
10 count. (*People v. Barasa* (2002) 103 Cal.App.4th 287, 291,
11 quoting *People v. Harvey* (1979) 25 Cal.3d 754, 758.)

12 Thus, for at least 25 years it has been held "improper and "unfair" to circumvent
13 a plea by using the material the People bargained away against the defendant. The
14 California Supreme Court holds the principle "implicit." The United States Supreme
15 Court also recognizes it. It is implicit in a plea bargain reducing the charge of first
16 degree murder to second degree murder, that the indeterminate sentence will not, in
17 actual fact, be based on a representation of the crime as a first degree murder,
18 eliminating all benefit to the defendant from the plea bargain under the guise and
19 expedient of quasi-judicial action by political appointees. The California Supreme
20 Court holds that the State "cannot with one hand give a benefit and with the other take
21 it away." (*People v. Harvey, supra*, 25 Cal.3d at p. 758.)

22 Had the prosecutor or trial judge believed that petitioner has acted in a "brutal,"
23 or "premeditated" manner or that her role in the offense amounted to first degree
24 murder, there would have been no plea bargain. Petitioner's second degree plea
25 resulted from the prosecutor's obvious difficulty in proving the elements of first degree
26 murder, specifically, that she planned the murder and acted with premeditation.
27 ***Because the Governor's action depriving petitioner of parole was based on the
28 allegation of first degree murder, i.e., that she planned and premeditated the victim's
murder, an overt violation of her plea bargain, it must be set aside.***

1 **III. THE GOVERNORS' ACTIONS WERE PROHIBITED**
2 **BY THE EX POST FACTO AND DUE PROCESS CLAUSES**
3 **OF THE FEDERAL AND CALIFORNIA CONSTITUTIONS**

4
5 **1. Ex Post Facto Claim**
6

7 Section 8(b) of Article 5 of the California Constitution and its enabling statute,
8 Pen.C. § 3041.2, enacted in 1988 authorizing governors to review, modify, and reverse
9 BPT parole grants in murder cases, are ex post facto when applied to cases like
10 petitioner's in which the offense occurred prior thereto and in which gubernatorial
11 jurisdiction is based on a plea bargain contract between the State and the defendant.

12 In *Rosenkrantz, supra*, 29 Cal.4th 616, the California Supreme Court held the
13 law not to be ex post facto when applied to a defendant convicted by a trier of fact of a
14 murder committed prior to its enactment. *Rosenkrantz* is inapplicable and inapposite
15 to petitioner's case. Unlike the petitioner in *Rosenkrantz*, who at trial defended against
16 charges of first degree murder, second degree murder, and voluntary manslaughter,
17 and who had no inkling of what his eventual sentence might be and had no voice
18 therein, petitioner waived her not guilty plea and her right to a trial, and further agreed
19 to assist the prosecution of her codefendants, thereby subjecting herself
20 to years of peril in exchange for a specific sentence, the length of which would be
21 determined solely by the Board of Prison Terms based on her commission of an
22 unpremeditated, unplanned second degree murder.

23 Imposition of a new obstacle to her parole, almost certain gubernatorial reversal,
24 which has extended her prison term and the prison terms of most similarly situated
25 prisoners indefinitely and has extinguished two valid grants of parole by BPT thus far,
26 constitutes a classic example of ex post facto law. Because the new law is necessarily
27 more onerous to petitioner, it is ex post facto. (U.S.Const., Art.I, §10; Cal.Const.,
28

1 Art.I, §9; *Miller v. Florida* (1987) 482 U.S. 423, 428-432; *Weaver v. Graham* (1982)
2 450 U.S. 24, 28-31; *Weaver v. Maas* (9th Cir. 1995) 53 F.3d 956, 959; *Fleming v.*
3 *Oregon Board of Paroles* (9th Cir. 1993) 998 F.2d 721, 725; *In re Stanworth* (1982) 33
4 Cal.3d 176, 180, 187-188.)

5
6 Petitioner, to establish an ex post facto violation, need not prove that she is
7 necessarily serving a longer prison term due to the new law than would have been the
8 case had it not been enacted (*Miller v. Florida, supra*, 482 U.S. at p. 432; *Fleming v.*
9 *Oregon Board of Paroles, supra*, 998 F.2d at pp. 723-725), although that is certainly
10 the case, a case that amply satisfies her obligation to establish that application of the
11 new law to her case created a “**significant risk** of increasing her punishment.” See
12 *Garner v. Jones* (2000) 529 U.S. 244, 256. The new gubernatorial obstacle in fact
13 **necessarily** works to her detriment and cannot work to her benefit. See *Nulph v. Faatz*
14 (9th Cir, 1994) 27 F.3d 451, 456.

15
16 Nor is it necessary for petitioner to have a “vested right” in the form of a parole
17 grant to assert a claim that determining her parole under the new gubernatorial
18 provision constitutes ex post facto law (*In re Stanworth, supra*, 33 Cal.3d at p. 179; see
19 *Weaver v. Graham, supra*, 450 U.S. at 30 [“presence or absence of an affirmative,
20 enforceable right is not relevant”]), although that, too, is the case.

21
22 Accordingly, Governors Davis and Schwarzenegger violated petitioners right
23 secured by the Ex Post Facto Clauses of the Federal and State Constitutions in
24 reversing two valid grants of parole by means of a new, more onerous law enacted
25 after she entered into a plea contract with the State to have her prison sentence for
26 second degree murder determined solely by BPT as provided by the laws then in force.
27
28

2. Due Process Claim

Application of Pen.C. § 3041.2 (Cal.Const., Art.V, §8(b)) to individuals like petitioner who entered into guilty plea contracts prior to its enactment violates the Due Process Clauses of the Federal and State Constitutions.

Petitioner gave the State the substantial benefit of a murder conviction, without costly, protracted proceedings, and extensive personal testimony permitting the State to secure two life convictions, by waiving all defenses and convicting herself by a plea of guilty. Central to the plea contract was petitioner's reliance on the condition that she would be released on parole once she served her minimum term for second degree murder, met the suitability criteria, and was actually granted parole by BPT. The State's courts and prosecutors are well aware of and rely on the fact that when defendants enters into pleas to murder they are focused on and motivated by the prospect of parole pursuant to the process then in place. See *Brown v. Poole, supra*, 337 F.3d 1155, citing *INS v. St.Cyr, supra*, 533 U.S. at pp. 322-323 ["Inferring based on general analysis of what would motivate defendants to accept plea agreements that particular defendant 'almost certainly' relied on availability of particular relief"].

It cannot be denied that application of Pen.C. § 3041.2 to petitioner nullified the consideration the State gave for her plea bargain. Petitioner had a vested right in the parole determination procedure in place at the time of her plea because it is what the State promised in exchange for the valuable consideration, an expedient, cost efficient conviction and a means to procure two additional convictions that she supplied with a guilty plea. (*Newton v. Rumery, supra*, 480 U.S. at p. 394.) When the state nullifies the benefit of a bargain after the fact, it has also perpetrated "a species of fraud." See *In re Ibarra, supra*, 34 Cal.3d at p. 289. A party of a plea agreement is entitled to enforce it when deprived of its benefits. Failure to hold a party to its terms "would undermine the integrity of the judicial process." See *People v. Vargas* (2001) 91 Cal.App.4th 506, 533-534, citing *People v. Collins, supra*, 45 Cal.App.4th at pp. 863-864.

1 Although *Rosenkrantz, supra*,⁶ 29 Cal.4th at p. 640, defeated an ex post facto
 2 claim⁷ by labeling the new gubernatorial power “merely” “an additional level of
 3 discretionary review,” that definition *defines* a due process violation under these
 4 circumstances. Because a plea agreement is a binding contract, it is unacceptable for
 5 the State to reap the “benefit of the[] plea agreement” and then impose “significant
 6 and manifest” detriments on the defendant retroactively. That “would surely be
 7 contrary to familiar considerations of fair notice, reasonable reliance, and settled
 8 expectations [because it] clearly attaches a new disability, in respect to transactions or
 9 considerations already past.” See *INS v. St. Cyr, supra*, 150 L.Ed.2d at pp. 375-378. It
 10 matters not that parole decisions are discretionary; the United States Supreme Court’s
 11 holdings in *St. Cyr* were made in the context of a similarly discretionary benefit.

12 Even if the voters intended the new gubernatorial authority to be retrospective,
 13 its impact on existing plea bargains was not contemplated. Because the principle of
 14 the above cited United States Supreme Court cases is controlling here, the Governors’
 15 power may only be applied to individuals who were convicted by a trier of fact before
 16 its passage or who committed their offenses after its passage.⁸ Its application to
 17 reverse petitioner’s grants of parole abrogated her right to due process and liberty
 18 interest in parole.

23
 24 ⁶ The validity of *Rosenkrantz* has been cast into doubt given the United States Supreme Court’s decision in *Stogner v.*
 25 *California* (2003) 156 L.Ed.2d 544, that disapproved the California Supreme Court’s “too narrow” ex post facto position
 in *People v. Frazer* (1999) 21 Cal.4th 737, on which *Rosenkrantz* relied, that labeled statutory changes “procedural only”
 rather than addressing their impact on fundamental fairness.

26 ⁷ As detailed in a previous section, *Rosenkrantz*’ ex post facto analysis of the impact of the new statute on a defendant
 27 convicted by a trier of fact of an offense committed prior to its enactment is inapplicable to a plea bargain for a specific
 term, sentence, and parole determination.

28 ⁸ Petitioner herein claims separately that, even if her plea bargain had been contracted after enactment of the new law, the
 Governors’ decisions in her case would have violated due process/plea bargain principles because they were based on re-
 characterization of her offense as a premeditated first degree murder.

1 **IV. INVOCATION OF THE UNCHANGEABLE FACTS OF PETITIONER'S**
2 **COMMITMENT OFFENSE TO INTERMINABLY PRECLUDE HER PAROLE**
3 **ABROGATES DUE PROCESS**

4
5 The California Supreme Court in *Dannenberg, supra*, 2005 WL 170692, held
6 that the facts of a commitment offense may in some cases serve as a ground to deny
7 parole to an otherwise parole qualified inmate. *Dannenberg* did not hold, and cannot
8 tenably be construed to permit the facts of an offense, because they are unchangeable,
9 to serve, as in petitioner's case, as a valid basis on which to *interminably* deny her
10 parole, converting her legislatively prescribed, judicially imposed prison term of 15
11 years to life with the possibility of parole, which Pen.C. § 3041(a) defines as a
12 probability of parole (Board "shall normally set a parole release date"), to life without
13 any possibility of parole. Please see *Biggs, supra*, 334 F.3d at p. 916.

14
15 The Ninth Circuit recently reviewed the constitutional propriety of a BPT
16 panel's use of factors of a first degree murder commitment offense to find a California
17 inmate unsuitable for parole at his *first* hearing. (*Biggs, supra*, 334 F.3d at p. 916.)
18 The Court found no evidence to support most of the panel's grounds for unsuitability
19 (inadequate remorse, an allegedly poor disciplinary record, or that he needed to serve
20 additional time because his gains were too recent), but held that a particularly
21 egregious commitment offense could be an appropriate basis for finding such a
22 prisoner unsuitable for parole at an *initial* parole hearing. The Ninth Circuit cautioned:

23
24
25 As in the present instance, the parole board's sole
26 supportable reliance on the gravity of the offense and
27 conduct prior to imprisonment to justify denial of parole can
28 be initially justified as fulfilling the requirements set

1 forth by state law. Over time, however, should Biggs
2 continue to demonstrate exemplary behavior and evidence of
3 rehabilitation, denying him a parole date simply because of
4 the nature of Biggs' offense and prior conduct would raise
5 serious questions involving his liberty interest in parole. . . .

6 A continued reliance in the future on an unchanging factor,
7 the circumstances of the offense and conduct prior to
8 imprisonment, runs contrary to the rehabilitative goals
9 espoused by the prison system and could result in a due
10 process violation. (*Biggs*, 334 F.3d at 916-917.)

11 Petitioner's case is far more compelling. She has been imprisoned for 24 years
12 after serving the equivalent of 2½ years in jail. She was eligible for parole 16 years
13 ago and has served 2 to 2½ times the minimum and maximum terms prescribed by
14 BPT's regulations for her second degree murder and in excess of her prescribed term
15 had the murder been first degree. She has been repeatedly found to pose a low parole
16 risk to public safety. She remains imprisoned despite being found suitable for parole
17 by two unanimous BPT panels. The prison terms applicable to the facts of her offense,
18 properly set by both panels in accordance with the regulations, accounting for her term
19 credits, lapsed 14½ years ago in 1990. Petitioner has endured 14 parole denials by
20 BPT and the Governors, based on her commitment offense.

21
22 Particularly in petitioner's case, the interminable preclusion of her parole based
23 on static factors of her commitment offense, converting her prison term to life without
24 parole, has abrogated her right to due process and liberty interest in parole.

**V. THE "GOVERNOR'S" DECISION VOIDING PETITIONER'S PAROLE
ABROGATED DUE PROCESS AND VIOLATED SECTION 8(b) OF ARTICLE 5
OF THE STATE CONSTITUTION; IT WAS NOT THE GOVERNOR'S
DECISION, BUT ONE WRITTEN BY BPT STAFF SIGNED BY THE
GOVERNOR OR A MEMBER OF HIS STAFF WITHOUT THE GOVERNOR'S
PERSONAL REVIEW REQUIRED BY LAW.**

BPT, not the Governor, writes the "Governor's" decisions. Its staff prepares a list of all conceivably negative facts and inferences concerning mainly the commitment offense that minimizes or omits parole-favorable evidence on which the panel based its decision. BPT conceals the fiasco by claiming that these "executive summaries" ("memorandum decisions") it forwards for the Governor's staff's review and a signature are "privileged" or "confidential" (exhibit F); although the process is but an administrative function not involving commissioners or deliberation.

Contrary to recitation in his report, Governor Schwarzenegger did not personally review, as required, all, or any of the documents and evidence read, considered and weighed by the panel that granted parole. Much of the record, e.g., the transcripts of petitioner's previous hearings reflecting her previous record and suitability evolution, that the panel weighed in its decision (see exhibit B, p. 5) *was not forwarded to the Governor's office*. Per the authorities set forth *infra*, Governor Schwarzenegger was required to personally review this material and weigh it in his decision.

What was allegedly the "Governor's" decision was one he did not make based on a record that he never saw. Sometimes the Governor has been out of the country on business at the moment he is purported to make such "decisions." It is undisputed that the Governor does not personally review these records (about 200 cases annually) as constitutionally and statutorily required. The Attorney General has conceded the truth of that fact in responding to like petitions. Further, pursuant to the Governor's/BPT's

1 policy, only about 1% of BPT's decisions (those "granting" parole) reach the
 2 Governor for his alleged "review." See exhibit F, p. 4.

3 The procedure is overtly devoid of due process and violates the State's
 4 Constitution and governing statute, which require:

5
 6 "[T]he governor, when reviewing the authority's decision . . .
 7 shall review materials provided by the parole authority . . . if
 8 the governor decides to reverse or modify a parole
 9 decision . . . he or she shall send a written statement to the
 inmate specifying the reasons for his or her decision."
 (Pen.C. § 3041.2.)

11 "The Governor may only affirm, modify, or reverse
 12 the decision of the parole authority on the basis of the same
 factors which the parole authority is required to consider."
 13 (Cal.Const., Art.V, § 8(b).)

14
 15 BPT (the "parole authority") "shall" consider "all relevant, reliable information
 16 available to the panel." (15 CCR § 2402(b); *In re Ramirez*, *supra*, 94 Cal.App.4th at p.
 17 566; *In re Rosenkrantz* (2000) 80 Cal.App.4th 409, 424-427; see *In re Dunham* (1976)
 18 16 Cal.3d 63, 66; *In re Stanley* (1976) 54 Cal.App.3d 1030, 1038.) Section 8(b) of
 19 Article V of the California Constitution, *supra*, requires Governors' decisions to be
 20 based on the same factors the hearing panel considered and was required to consider in
 21 its decision. (*In re Arafles*, (1992) 6 Cal.App.4th 1467, 1477, 1479, 1481; see *Johnson*
 22 *v. Gomez* (9th Cir. 1996) 92 F.3d 964, 967; *Ramirez*, 94 Cal.App.4th at pp. 559-560.)

23 A governor's action reversing parole under Pen.C. § 3041.2 is arbitrary,
 24 capricious, and denies due process if it is not based on his or her personal review of all
 25 of the documents the hearing panel considered and did not, therefore, constitute the
 26 governor's "individualized consideration" of the case at hand. (*Rosenkrantz*, 29 Cal.4th
 27 at p. 677.) The process, whereby BPT "grants" parole, then prepares the governor's
 28 decision for his staff to process that inherits his (or staff's) signature, without the

1 governor's personal review or even his receipt of all of the material weighed by the
2 panel, that reverses its Commissioners' decision based on BPT staff's recommendation,
3 makes a mockery of due process and the State's Constitution and parole laws.

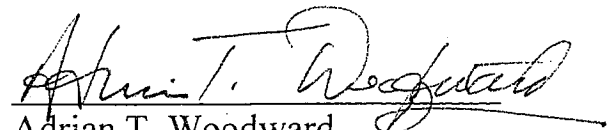
4 Petitioner did not receive individualized, or *any* consideration by Governor Arnold
5 Schwarzenegger; gubernatorial review did not occur.

6
7
8 ***CONCLUSION; RELIEF REQUESTED***

9 Having set forth a prima facie case for relief, petitioner respectfully requests
10 issuance of an order to show cause and, after briefing by the parties, based on the
11 foregoing authorities, issuance of a writ of habeas corpus vacating the Governor's
12 action of October 11, 2004, that reversed BPT's second grant of parole, reinstating
13 BPT's decision of May 17, 2004, releasing petitioner on parole on the date calculated
14 therein, and ordering the Department of Corrections to credit her parole term with the
15 number of days of her prison confinement in excess of her prison term calculated by
16 BPT, after deducting applicable statutory and regulatory postconviction credit.

17
18 Dated February 26, 2005.
19

20
21
22 Respectfully submitted,

23
24 
25 Adrian T. Woodward
26 Counsel for Petitioner
27
28

VERIFICATION

I declare, under penalty of perjury, that the facts set forth above are true.
Dated February 26, 2005, at Long Beach, California.

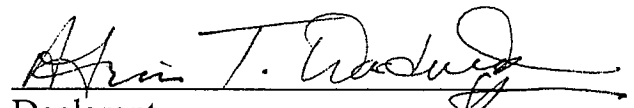

Declarant

TABLE OF EXHIBITS

Exhibit A Abstract of Judgment

Exhibit B Certified transcript, May 17, 2004 parole hearing

Exhibit C Governor's reversal decision, October 11, 2004

Exhibit D Petitioner's psychological (forensic) evaluations

Exhibit E Petitioner's correctional evaluation

Exhibit F Communications regarding BPT's "Executive Summaries"

EXHIBIT A

Security Trans

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY
ABSTRACT OF JUDGMENT

(Commitment to State Prison)

The People of the State of California,
PLAINTIFF,

VS

BRANDEE TRIPP,

DEFENDANT.

Present:
Hon.

Ralph M. Drummond

JUDGE OF THE SUPERIOR COURT

James T. O'Farrell/Gregory Jacobson
DISTRICT ATTORNEY

Frank Dice

COUNSEL FOR DEFENDANT

This certifies that on 2/11/81 judgment of conviction of defendant was entered as follows:(1) Case No. CR 7639 Count No. 3 On his plea of GUILTYhe was convicted by the Court of violation of Section 187 of the Penal Code,
murder in the second degree, a felonywith prior felony convictions as follows: None

Date

County and State

Crime

Disposition

Defendant has been held in custody for 875 days as a result of the same criminal act or acts for which he has been convicted.Defendant was not armed with a deadly weapon at the time of his commission of the offense or a concealed deadly weapon at the time of his arrest within the meaning of Penal Code Sections 969c, 3024.Defendant was not armed with a deadly weapon at the time of his commission of the offense within the meaning of Penal Code Sections 969c, 12022.Defendant did not use a firearm in his commission of the offense within the meaning of Penal Code Sections 969d, 12022.5.(2) Defendant was not adjudged an habitual criminal within the meaning of Subdivision a or b of Section 644 of the Penal Code, and the Defendant is not an habitual criminal in accordance with provisions of Subdivision (c) of that section.(3) IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant be punished by imprisonment in state prison of the state of California for the term provided by law and that he be remanded to the Sheriff of the County of Monterey, and by him delivered to the Director of Corrections of the State of California at California Institute for Women, FrontersIt is ordered that sentences shall be served in respect to one another as follows: N/Aand in respect to any prior uncompleted sentence(s) as follows: N/A

(4) To the Sheriff of the County of Monterey and to said Director of Corrections:

Pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above named defendant into custody of Director of Corrections at the Facility above named, at your earliest convenience.

Witness my hand and seal of said court

ERNEST A. MAGGINI, Clerk

on February 11, 1981

By

Deputy
Deputy

Deputy

I do hereby certify the foregoing to be a true and correct abstract of the judgment duly made and entered on the minutes of the Superior Court in the above entitled action as provided by Penal Code Section 1213.

Attest my hand and seal of the said Superior Court on February 11, 1981ERNEST A. MAGGINI, County Clerk and Clerk of the
Superior Court of California for the County of Monterey.*Ralph M. Drummond*
Judge of the Superior Court of the State of
California for the County of Monterey

By

Deputy
Deputy

Deputy

EXHIBIT B

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PRISON TERMS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

BRANDEE TRIPP)
_____)

CDC Number W-15695

COPY

INMATE

CALIFORNIA INSTITUTION FOR WOMEN

CORONA, CALIFORNIA

MAY 17, 2004

1:50 P.M.

**PENDING REVIEW
AND APPROVAL**

PANEL PRESENT:

KEN RISEN, Presiding Commissioner
HERBERT MAY, Deputy Commissioner

OTHERS PRESENT:

BRANDEE TRIPP, Inmate
ADRIAN WOODWARD, Attorney for Inmate

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____ No
_____ Yes

See Review of Hearing
Transcript Memorandum

Matthew Yates

Capitol Electronic Reporting

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DEPUTY COMMISSIONER MAY: On record.

PRESIDING COMMISSIONER RISEN: This is a
Subsequent Parole Consideration Hearing for Brandee
B-R-A-N-D-E-E Tripp, T-R-I-P-P. CDC number is W-
15695. Today's date is May the 17th, 2004. The
time is 1:50 P.M. here at the CIW Boardroom,
California Institute [sic] for Women. Prisoner's
legal status: She was received 2/18 of '81 from
Monterey County. The offense is murder second,
case number CR7639. Count number three, 187 of the
Penal Code. Term is 15 years to life. Minimum
eligible parole date is 5/6 of 1989. This hearing
is being tape recorded. For purposes of voice
identification, we need to go around the room and
identify ourselves. Please state your name. Spell
your last name. And in addition to spelling your
last name, we need the inmate to give her CDC
number. Go to my left. My name is Ken Risen, R-I-
S-E-N, Commissioner.

DEPUTY COMMISSIONER MAY: Herbert May, M-A-
Y, Deputy Commissioner.

ATTORNEY WOODWARD: Adrian Woodward, W-O-O-
D-W-A-R-D, Ms. Tripp's Attorney. Your turn.

INMATE TRIPP: Brandee Tripp, T-R-I-P-P, W-
15695.

PRESIDING COMMISSIONER RISEN: Okay. We also

1 have one correctional peace officer in the room.
2 She will not be participating in the hearing. She
3 is here for security purposes. Ms. Tripp, your
4 first name is spelled Bran, B-R-A-N-capital D-E-E,
5 isn't it?

6 INMATE TRIPP: Yes, Sir.

7 PRESIDING COMMISSIONER RISEN: Okay. Now,
8 you filled out a form 1073, which is our Americans
9 With Disability Act form. This was done on March
10 15th, 2004 and at that time, you indicated you did
11 not have a disability. Is that correct?

12 INMATE TRIPP: Yes, Sir.

13 PRESIDING COMMISSIONER RISEN: Okay. What I
14 need you to do is to read that ADA statement there
15 in front of you.

16 INMATE TRIPP: "The Americans With
17 Disability Act, ADA, is a law to help
18 people with disabilities.
19 Disabilities are problems that make
20 it harder for some people to see,
21 hear, breathe, talk, walk, learn,
22 think, work, or take care of
23 themselves than it is for others.
24 Nobody can be kept out of public
25 places or activities because of a
26 disability. If you have a
27 disability, you have the right to ask

1 for help to get ready for your BPT
2 hearing, get to the hearing, talk,
3 read forms and papers, and understand
4 the hearing process. BPT will look
5 at what you've asked for to make sure
6 that you have a disability that is
7 covered by the ADA and that you have
8 asked for the right kind of help. If
9 you do not get help, or if you do not
10 think you got the kind of help you
11 need, ask for a BPT 1074 Grievance
12 form. You can also get help to fill
13 it out."

14 **PRESIDING COMMISSIONER RISEN:** Thank you.
15 Now, do you have any problems walking up and down
16 stairs or over a distance of more than 100 yards?

17 **INMATE TRIPP:** No, Sir.

18 **PRESIDING COMMISSIONER RISEN:** Do you need
19 glasses or a magnifying device to see or read
20 documents?

21 **INMATE TRIPP:** Well, I'm waiting for
22 glasses, but it's for distance. It's not for
23 reading.

24 **PRESIDING COMMISSIONER RISEN:** Okay. Do you
25 have any hearing impairments?

26 **INMATE TRIPP:** No, Sir.

27 **PRESIDING COMMISSIONER RISEN:** Do you take

1 any medication?

2 INMATE TRIPP: (Inaudible.)

3 PRESIDING COMMISSIONER RISEN: Any
4 medication that might interfere with your
5 participation in the hearing?

6 INMATE TRIPP: No, Sir.

7 PRESIDING COMMISSIONER RISEN: Have you ever
8 been classified as Triple CMS or EOP?

9 INMATE TRIPP: No, Sir.

10 PRESIDING COMMISSIONER RISEN: How far did
11 you go in school on the street?

12 INMATE TRIPP: I went to the 10th or 11th
13 grade. I got kicked out and then I went to
14 continuation and finished.

15 PRESIDING COMMISSIONER RISEN: Okay. So do
16 you have a high school equivalency or a GED?

17 INMATE TRIPP: I have both.

18 PRESIDING COMMISSIONER RISEN: Were you ever
19 placed in special education classes or classes for
20 slow learners?

21 INMATE TRIPP: No, Sir.

22 PRESIDING COMMISSIONER RISEN: Okay. The
23 Panel will find that the prisoner has no disability
24 as defined under the Americans With Disability Act.
25 Would you agree, Counsel?

26 ATTORNEY WOODWARD: I agree.

27 PRESIDING COMMISSIONER RISEN: Okay. The

1 purpose of today's hearing is to again consider
2 your suitability for parole. In arriving at a
3 decision, we will consider the commitment offense,
4 your prior criminality and social history, as well
5 as your behavior and overall programming since your
6 commitment. We have reviewed your files and prior
7 transcripts. You will have an opportunity to make
8 corrections and clarifications regarding the
9 records. We will probably read into the record
10 Statement of Facts as reflected by the record. We
11 will then directly go to your progress since your
12 last hearing, referring to new psychiatric reports,
13 and any other information that has a bearing on
14 your parole suitability. Any additional parole
15 plans should be brought to our attention. The
16 prisoner's attorney and the prisoner will be given
17 an opportunity to make a statement regarding parole
18 suitability and length of confinement. After this
19 is done, we will recess, clear the room, and
20 deliberate. Once we've reached our decision, we'll
21 resume the hearing and announce the decision. The
22 prisoner is afforded certain rights, timely notice
23 of this hearing today, availability to review the
24 Central File, the right to present relevant
25 documents at this hearing, the right to an
26 impartial Panel. Is the prisoner's attorney
27 satisfied these rights are met?

1 **ATTORNEY WOODWARD:** Yes.

2 **PRESIDING COMMISSIONER RISEN:** The prisoner
3 will receive a copy of a tentative written decision
4 today. That decision becomes effective upon
5 approval by the Decision Review Unit at the Board
6 of Prison Terms. Later, you will receive a
7 transcript and a copy of the decision. It's
8 automatically sent to you. As of May 1st, 2004,
9 there was a major change limiting your right to
10 appeal. The Board of Prison Terms no longer accept
11 appeals. You have to appeal directly to the
12 courts. And apparently, that information is
13 contained in the prison law library and there's
14 (inaudible) in the Administrative Appeals
15 correspondence, grievance concerning Board of
16 Prison Term decisions. It's administrative
17 directory AD 4 slash 01. Okay, today you will not
18 be required to discuss the commitment offense with
19 the Panel, and you will not be required to admit
20 the commitment offense. However, the Panel accepts
21 as true the Court findings. Any confidential
22 materials?

23 **DEPUTY COMMISSIONER MAY:** There will be
24 none, Mr. Chairman, thank you.

25 **PRESIDING COMMISSIONER RISEN:** Okay. Any
26 additional documents for us to review today?

27 **ATTORNEY WOODWARD:** As requested, have the

1 Chairpersons had an opportunity to read the brief
2 submitted by my office? Because I was afraid --
3 it's not in front of you.

4 PRESIDING COMMISSIONER RISEN: Where?
5 Where? I didn't see it.

6 ATTORNEY WOODWARD: I didn't see it in front
7 of you and it was submitted.

8 PRESIDING COMMISSIONER RISEN: Nope.

9 ATTORNEY WOODWARD: So I'm a little
10 concerned.

11 PRESIDING COMMISSIONER RISEN: I was going
12 to say I have two documents, one letter from the
13 archdiocese and a letter from someone else. So I
14 only have those two letters. Are there more than
15 that?

16 ATTORNEY WOODWARD: Yes. There's additional
17 documentation from a prospective employer. There's
18 documentation from a conversion to a controlled
19 halfway house, (inaudible). I can submit copies to
20 this Board presently.

21 DEPUTY COMMISSIONER MAY: You want to do
22 that right now?

23 ATTORNEY WOODWARD: My only concern is that
24 the brief is --

25 DEPUTY COMMISSIONER MAY: Do you have a copy
26 of it?

27 ATTORNEY WOODWARD: I do.

1 DEPUTY COMMISSIONER MAY: (Inaudible.) Is
2 that a copy of your (inaudible)?

3 ATTORNEY WOODWARD: These are the two copies
4 of an indication from Casanova and your prospective
5 employer.

6 DEPUTY COMMISSIONER MAY: Okay. Great.
7 That's really cool.

8 ATTORNEY WOODWARD: Absolutely. I don't
9 think the Chairman will have an opportunity to read
10 this. Mind if we take a brief recess for you?

11 PRESIDING COMMISSIONER RISEN: Okay, in a
12 moment, we'll take a recess and I'll read them.

13 ATTORNEY WOODWARD: Yeah.

14 PRESIDING COMMISSIONER RISEN: I have a
15 hearing check -- No, why don't we finish this so I
16 don't forget where we're at.

17 ATTORNEY WOODWARD: Yes, I apologize. These
18 are also two letters, one from two family members
19 that are supportive of her release.

20 PRESIDING COMMISSIONER RISEN: Okay, so four
21 letters and a brief? Okay, I have a checklist of
22 documents contained in my file. I've marked it
23 Exhibit One. I'd like you to look at it to ensure
24 that you have those documents. Also, do you have
25 this letter from the Arroyo Grande Police
26 Department?

27 ATTORNEY WOODWARD: No. That was never --

1 We have (inaudible) type concerns. We never
2 received a notification from (inaudible).

3 PRESIDING COMMISSIONER RISEN: I'm sure it's
4 basically the same as it said last time. Almost
5 word for word.

6 ATTORNEY WOODWARD: Okay. Thank you. I
7 believe I'm aware of the documentation of
8 (inaudible), I'm sure.

9 PRESIDING COMMISSIONER RISEN: Okay. Any
10 objections at this time? Are they in the brief?

11 ATTORNEY WOODWARD: The objections are not
12 in the brief. My only concern is the brief is a
13 relevant document and as long as the gentleman --
14 Mr. Risen, you indicate that you're going to --
15 Excuse me, Risen -- read the brief. It's relevant,
16 and so that's my only concern.

17 PRESIDING COMMISSIONER RISEN: Okay. I will
18 read it in just a moment, then. At this point,
19 we'll go to recess. The time is 2:04 and we'll
20 call you back in in a few minutes.

21 ATTORNEY WOODWARD: Thank you. I understand
22 and appreciate.

23 [Off the record.]

24 DEPUTY COMMISSIONER MAY: We're back on
25 record.

26 PRESIDING COMMISSIONER RISEN: Okay, we'll
27 resume the hearing. We have read the Counsel's

10

1 brief and we do have copies of them. The time is
2 2:20. At this point, is the prisoner going to
3 address the Panel today?

4 **ATTORNEY WOODWARD:** Yes.

5 **PRESIDING COMMISSIONER RISEN:** Could you
6 raise your right hand, please? Best you can. Do
7 you solemnly swear or affirm that the testimony you
8 give at this hearing will be the truth, the whole
9 truth, and nothing but the truth?

10 **INMATE TRIPP:** I do.

11 **PRESIDING COMMISSIONER RISEN:** Okay. I'm
12 going to read the Statement of Facts from the
13 summary of the crime in the June, 2004 Board
14 report.

15 "On July 8th of 1979, the victim's
16 mother reported her daughter missing
17 and indicated William Ruckert,
18 parenthesis, Brandee Tripp's
19 stepfather parenthesis, might be
20 involved in the disappearance of her
21 daughter. The victim was scheduled
22 to testify against Mr. Ruckert in a
23 child molestation case. Subsequent
24 investigation led Jon Sorenson to
25 reveal knowledge of a conspiracy to
26 kidnap the child by Mr. Ruckert and
27 Mr. Hilton Tripp, T-R-I-P-P,

11

1 parenthesis, Mrs. Tripp's husband,
2 close parenthesis. Roger Ladd
3 indicated Mr. Ruckert offered him
4 \$1,000 to kidnap the victim's older
5 sister Betty Ann Murdock. He
6 observed Hilton Tripp, Randy Cook,
7 and Brandee Tripp discussing methods
8 of killing the older sister. Mr.
9 Ladd also observed further
10 discussions of methods of kidnapping
11 and killing Tamron Carpenter by
12 Hilton and Brandee Tripp. On July
13 9th, 1979, Hilton Tripp implicated
14 Randy Cook as the person who killed
15 the victim and acknowledged he
16 assisted in burying the child. He
17 stated his wife Brandee was in
18 agreement with the kidnapping and
19 arranged for the child to leave the
20 home in order to facilitate the
21 event. The body of the victim was
22 found buried near Avila Beach, A-V-I-
23 L-A. Ms. Tripp was arrested on July
24 10th, 1979."

25 Okay. Would you like to make any corrections or
26 clarifications regarding this crime?

27 **INMATE TRIPP:** Well, some of the things in

1 there I really don't remember happening. I mean, I
2 didn't know that Roger Ladd was approached. I was
3 always been under the impression that we brought
4 him into the mess. Because I was staying at his
5 trailer and my ex-husband, now, found me when we
6 were discussing everything which involved Roger,
7 but I don't remember him being directly involved as
8 far as that version. I always thought we
9 implemented him just by -- I mean, just by being in
10 his area.

11 **PRESIDING COMMISSIONER RISEN:** Okay, were
12 you -- Okay, let me ask you this. Now, were you
13 ever present when there was a conversation between
14 Ruckert, yourself, and someone else to kidnap the
15 older sister and kill her?

16 **INMATE TRIPP:** Well, it was a while ago. It
17 was a few Board hearings ago. And at the time,
18 they didn't really care to know and -- What
19 happened at the time is me and Randy went with
20 Hilton to talk to my stepfather. But me and Randy
21 had to sit in the car, and that would be Cook.
22 That would be Mr. Cook. And we watched Hilton talk
23 to my stepfather on the front of our grass where my
24 mom's house is. That was when he was staying -- He
25 was being allowed to go there to get his clothes at
26 the time. And we watched the conversation, but we
27 never really heard the conversation. But when it

13

1 came to testifying to them, I perjured myself and
2 said I heard everything. And I just repeated what
3 my husband told me because I didn't think that my
4 stepfather should be the only one not going
5 anywhere.

6 PRESIDING COMMISSIONER RISEN: Okay.

7 ATTORNEY WOODWARD: I think -- necessary to
8 clarify that for me is that -- I think what Ms.
9 Tripp is indicating at the trial for Mr. Ruckert,
10 she was primary state's witness against him. Had
11 she not testified, it's quite probable he would
12 have been exculpated, I think. Because they
13 couldn't find -- So she perjured herself to convict
14 Mr. Ruckert and become the star witness against Mr.
15 Ruckert in the subsequent (inaudible) convicted of
16 first degree.

17 PRESIDING COMMISSIONER RISEN: Okay. Does
18 that mean that her husband Hilton never testified
19 against Ruckert?

20 INMATE TRIPP: Not to my knowledge. I was
21 the last one that they ever seen.

22 PRESIDING COMMISSIONER RISEN: Okay.

23 INMATE TRIPP: Out of the -- There was four
24 of us. I was the last. That would have went to
25 trial if I hadn't pled guilty.

26 PRESIDING COMMISSIONER RISEN: Okay, now the
27 first one they were going to kidnap was -- and

14

1 according to someone, murder -- would be the older
2 sister. What was her name?

3 INMATE TRIPP: Betty Ann Maddox.

4 PRESIDING COMMISSIONER RISEN: Okay. What
5 ever happened to her?

6 INMATE TRIPP: Okay. He came with this
7 wonderful idea. I wasn't real thrilled. And in my
8 mind at the time, I didn't really think I was
9 participating in murder. And they did discuss
10 murder and they were smoking a joint and they were
11 talking, just like, bizarre, and I told them, I'm
12 not helping you with any murder. I'll get her out
13 of the house. If you want to do what you're going
14 to do, you can do it.

15 PRESIDING COMMISSIONER RISEN: Okay.

16 INMATE TRIPP: But I'll get her out of the
17 house. But when I went to get her out of the
18 house, they stayed in the bushes and nobody did
19 anything. So she went back to her home, so nothing
20 ever happened to her.

21 PRESIDING COMMISSIONER RISEN: So we're
22 talking about the older sister?

23 INMATE TRIPP: That's the older sister.

24 PRESIDING COMMISSIONER RISEN: Okay. Now,
25 how were you involved in the younger sister's
26 kidnapping?

27 INMATE TRIPP: In the beginning, I was

1 actually running interference with her. Because
2 they were talking and they wanted to kill her. I
3 didn't want to kill her. I didn't want to help
4 kill her. I didn't think she needed to be dead,
5 and I didn't want to do it. And so, we'd set up
6 little plans and they'd kind of just casually fall
7 through. And it wouldn't work, and I'd take Tammy
8 home and we'd go places, and I'd take Tammy home.
9 Well, the day that this happened, before it
10 happened, my husband promised me that no one would
11 get hurt. He promised me that he would go pick
12 Tammy up if I sent her down to the store. I could
13 go to Randy's house and watch her, and they would
14 go convince my stepfather that they kidnapped her
15 and she wouldn't be testifying to get the money.
16 And then we were going to let her go.

17 **PRESIDING COMMISSIONER RISEN:** And you were
18 supposed to be at Randy Cook's house?

19 **INMATE TRIPP:** Yeah.

20 **PRESIDING COMMISSIONER RISEN:** The trailer.

21 **INMATE TRIPP:** So after she came up -- No, I
22 was supposed to be -- He lived with his girlfriend
23 in a house in Arroyo Grande. So I went after her
24 mom called, I went to Randy's house and I waited
25 and I waited and I waited. And in my head, I knew
26 something wasn't going right, but I was afraid to
27 leave, because I was afraid if I wasn't where I was

16

1 supposed to be and something happened to her, then
2 it was my fault. And that's how I thought when I
3 was --

4 PRESIDING COMMISSIONER RISEN: Okay. Now
5 how did Tamron Carpenter, the victim, know you?

6 INMATE TRIPP: He --

7 PRESIDING COMMISSIONER RISEN: She.

8 INMATE TRIPP: They were a friend of my
9 stepdad's for years and I met them through my
10 stepfather for years.

11 PRESIDING COMMISSIONER RISEN: Did you watch
12 them? Were you like a caretaker?

13 INMATE TRIPP: Well, no. We never
14 babysitted, but her older sister, Betty Ann, was my
15 best friend.

16 PRESIDING COMMISSIONER RISEN: The one --

17 INMATE TRIPP: The older one.

18 PRESIDING COMMISSIONER RISEN: The older
19 one.

20 INMATE TRIPP: Maddox.

21 PRESIDING COMMISSIONER RISEN: Okay. But
22 Tamron knew you well.

23 INMATE TRIPP: Yeah.

24 PRESIDING COMMISSIONER RISEN: So if you
25 went to Randy Cook's house and held her there, how
26 -- Once you ultimately got away, how would you not
27 be identified?

1 **INMATE TRIPP:** Well, in my head, I was not
2 going to let her know that she was being kidnapped.
3 I had planned in my head that I would just tell
4 her, your mom knows we're here. And we're just
5 going to hang out for a while, and then we'll go to
6 the beach and then we'll go back to your mom's.
7 Because she thought we were going somewhere. She
8 never knew. When she was with me and I would take
9 her places and they would want to kidnap her and I
10 wouldn't let them do it then. And I'd tell them,
11 no, no. This isn't going to work. And I'd talk
12 them out of it because I was there. We were going
13 places. Like, we'd go to the park. We'd go
14 swimming. So I was always there with her. And
15 they promised me that they would drop her off and I
16 would just watch her and so I had it planned. And
17 I had my moped and I had it planned that we'd go to
18 the park and she would never know. In my head. I
19 didn't think that anything could go wrong, and I
20 didn't think far enough to know that her life would
21 be taken.

22 **PRESIDING COMMISSIONER RISEN:** Didn't you
23 feel that Ruckert would have to ensure in some way
24 that she'd been taken care of? Not just by you
25 telling him.

26 **INMATE TRIPP:** I never thought that far.
27 And after years of growing up and thinking of how

1 he was, I would think that now. I know what kind
2 of person he is today. But back then, I didn't
3 think that. I figured --

4 PRESIDING COMMISSIONER RISEN: How old were
5 you then?

6 INMATE TRIPP: I had just turned 20.

7 PRESIDING COMMISSIONER RISEN: And where
8 were you living?

9 INMATE TRIPP: Well, at the time, we were
10 living in a tent.

11 ATTORNEY WOODWARD: Sorry, but did I hear
12 the tape recorder go off or am I imagining things?

13 DEPUTY COMMISSIONER MAY: It's on.

14 ATTORNEY WOODWARD: I apologize. I'm sorry.

15 PRESIDING COMMISSIONER RISEN: Where you
16 living at the time?

17 INMATE TRIPP: We were living in a tent
18 underneath an overpass by Avila.

19 PRESIDING COMMISSIONER RISEN: And this was
20 in 1979.

21 INMATE TRIPP: Yes, Sir.

22 PRESIDING COMMISSIONER RISEN: Well, how do
23 you feel about your involvement now in the case?

24 INMATE TRIPP: I believe that if I hadn't
25 gotten involved at all -- I mean, I should have
26 just called when they were talking about it and
27 preventing it altogether.

1 **PRESIDING COMMISSIONER RISEN:** Probably.

2 **INMATE TRIPP:** I would have called the
3 police. I did try to call the police once or
4 twice, but I got scared. When they picked up the
5 phone, I hung up. And I called from a payphone.
6 And now that I'm older, I know that I knew at the
7 time something wasn't right. Or I wouldn't be
8 trying to call the police.

9 **PRESIDING COMMISSIONER RISEN:** Okay. What
10 you're saying, then, is on July 8th, '79, when they
11 didn't bring the girl to you, you knew something
12 was wrong. And so you tried to call the police?

13 **INMATE TRIPP:** I tried twice and I got
14 scared and I hung up the phone as soon as he
15 answered. I was at a payphone in old Arroyo Grande
16 by this bridge. And I hung up the phone. I never
17 talked to anyone because I got scared. In my head,
18 I was thinking, well, if I'm not there and they
19 show up, what happens if they take things into
20 their own hands?

21 **PRESIDING COMMISSIONER RISEN:** Okay, now,
22 she knew both Hilton and Randy Cook? Hilton Tripp?

23 **INMATE TRIPP:** I'm not sure if she really
24 knew Randy really well, but she knew Hilton because
25 he was with me most of the time.

26 **PRESIDING COMMISSIONER RISEN:** Okay. And
27 you sent her to the store near Avila Beach?

1 **INMATE TRIPP:** No. I sent her down -- The
2 store was, like, right down from her house. But
3 they were parked down there waiting.

4 **PRESIDING COMMISSIONER RISEN:** Did you
5 ever --

6 **INMATE TRIPP:** They (inaudible) up on a hill
7 and the store was right --

8 **PRESIDING COMMISSIONER RISEN:** Okay. You
9 were arrested two days later. Did you ever talk to
10 Hilton and Randy?

11 **INMATE TRIPP:** No. No. What actually
12 happened is they picked me up for questioning. I
13 denied the whole thing. I acted like I didn't know
14 anything. And they held me. And at the time, I
15 guess it was 23 hours. They can hold you 23 hours
16 and they have to let you go if they're not going to
17 arrest you. And during that time, Hilton had came
18 into the police department looking for me. And
19 they ended up picking him up because he had a
20 juvenile warrant for him for a prior conviction.
21 And they let me go and then I think I got arrested
22 the next day. I think it was the next day early
23 morning. I mean, I went through a whole day and
24 then they woke me up out of a dead sleep, so it
25 was, like, two days later, the following morning.
26 But it was, like, within a 24 hour period
27 (inaudible).

1 **PRESIDING COMMISSIONER RISEN:** Well, if
2 she's walking somewhere and these two guys pull up
3 and attempt to pick her up, she's probably not
4 going to get in the car.

5 **INMATE TRIPP:** No, she was in the store and
6 she knew them. There's a grocery store down there
7 and I sent them down to the store to buy some
8 items. And they asked her if -- I guess they asked
9 her if she wanted a ride. I never really talked to
10 them after it happened because I couldn't believe
11 that they did it. I couldn't believe that they
12 killed someone.

13 **PRESIDING COMMISSIONER RISEN:** Did Hilton or
14 Cook ever tell you that she was strangled to death?

15 **INMATE TRIPP:** When they came back, they
16 finally showed up at Randy's house and I asked them
17 where they had been. And they told me and I told
18 them, I don't want to hear it. And when they told
19 me where it was, I never went back to the area
20 because I knew that she was there. And I just
21 couldn't do it. But before I told him that I
22 didn't want to hear anymore -- He had made the
23 statement that me and Randy pulled the rope at the
24 same time, so neither one of us knows who killed
25 her. And I told him, I don't want to hear
26 anything. Don't tell me anything. I can't believe
27 that you did it. And then I wouldn't go back to

1 the area.

2 PRESIDING COMMISSIONER RISEN: Well, how
3 would you handle a situation like that today?

4 INMATE TRIPP: If I heard anyone
5 conspiracizing about any kind of awful thing, I
6 would call the police within a minute. I would
7 have no problem turning anyone in today. Because
8 when I was young, you think, no, they're really not
9 going to do it. You know, people always talk and
10 it's like, they really don't mean it. I wouldn't
11 take that chance. Because what if they do mean it.
12 You know. Tammy's gone, and it is my fault.
13 Because she would have never went down to the
14 store. You know, and they may have not have done
15 anything if I hadn't helped, but I wouldn't have
16 helped if they hadn't promised me that she wouldn't
17 have got hurt. The reason it took so long --

18 PRESIDING COMMISSIONER RISEN: Then your
19 motivation was you wanted the \$1,000?

20 INMATE TRIPP: Well, I wanted to burn my
21 stepfather. I wanted to pay him back for
22 everything that I went through with him.

23 PRESIDING COMMISSIONER RISEN: And how did
24 you plan to do that?

25 INMATE TRIPP: When he gave us the money, we
26 were going to turn Tammy loose and let her testify.
27 We weren't going to keep her. We were going to let

1 her do what she needed to do. Because we knew he
2 wouldn't -- The one thing we did know is he would
3 never turn us in. Because what would he say. You
4 know, he couldn't turn us in. And I don't remember
5 who put that knowledge in our head, but we knew
6 that for a fact that he wouldn't turn us in. So if
7 he gave us the money, there was nothing he could do
8 if Tammy showed up to testify.

9 PRESIDING COMMISSIONER RISEN: Okay, but it
10 was \$1,000.

11 INMATE TRIPP: Well, they said 1,000. I was
12 told 10,000, so I'm not really sure because I never
13 really heard -- The only thing I heard was what
14 Hilton ever told us.

15 PRESIDING COMMISSIONER RISEN: Okay, now
16 let's go over your pre-conviction factors. Says
17 you have no juvenile record.

18 INMATE TRIPP: No, I don't have (inaudible).

19 PRESIDING COMMISSIONER RISEN: Okay. Now,
20 in the Governor's letter, he said that in the '85,
21 '91, and '93 psych evaluation, you talked about
22 shoplifting as a juvenile. Did you do that?

23 INMATE TRIPP: I was a delinquent at times,
24 but I never got arrested for it.

25 PRESIDING COMMISSIONER RISEN: Okay. Then
26 you stole cars.

27 INMATE TRIPP: I stole two cars to run away

1 with.

2 PRESIDING COMMISSIONER RISEN: Okay. And
3 then you stole money from your parents?

4 INMATE TRIPP: I did steal money from my
5 mom.

6 PRESIDING COMMISSIONER RISEN: Back to the
7 commitment offense. Was there any drugs or alcohol
8 on your part? Were you using drugs or under the
9 influence of alcohol?

10 INMATE TRIPP: When we were talking about
11 Betty Ann, we were smoking weed. We were pretty
12 loaded.

13 PRESIDING COMMISSIONER RISEN: Okay, but on
14 the --

15 INMATE TRIPP: But I don't remember doing
16 drugs or alcohol at the time when Tammy -- I really
17 tried to talk them out of it and why I didn't call
18 the cops -- At that age, that young. I think it's
19 because I thought I was in love with him, and I
20 realized that wasn't love when I grew up. I'm not
21 real sure why. I think my judgment was very
22 impaired because of everything. I think I hated my
23 stepfather so much, honestly, that it just blinded
24 me of what was really right and wrong.

25 PRESIDING COMMISSIONER RISEN: Okay. But
26 drugs or alcohol didn't cloud your decision-making
27 abilities on this particular day when you sent the

1 victim down to the market?

2 INMATE TRIPP: I don't think so. I don't
3 remember being high or drinking that day.

4 PRESIDING COMMISSIONER RISEN: And you had
5 no adult convictions (inaudible).

6 INMATE TRIPP: No.

7 PRESIDING COMMISSIONER RISEN: Okay. Says
8 you're divorced. Were you divorced at the time of
9 the commitment offense?

10 INMATE TRIPP: No. I was still married and
11 my attorney advised me not to get a divorce until
12 after everything was over. So when I arrived at
13 CIW within the year, I was divorced.

14 PRESIDING COMMISSIONER RISEN: Okay. You
15 were born where? In California?

16 INMATE TRIPP: Yes. San Luis Obispo.

17 PRESIDING COMMISSIONER RISEN: You have one
18 half-sister and one half-brother. Your parents
19 separated when you were two years old.

20 INMATE TRIPP: Yes.

21 PRESIDING COMMISSIONER RISEN: Your mother
22 married William Ruckert. That's the guy who was
23 charged with the molestation.

24 INMATE TRIPP: Yeah.

25 PRESIDING COMMISSIONER RISEN: You were
26 especially close to your maternal grandmother, who
27 is now deceased.

1 INMATE TRIPP: Yes.

2 PRESIDING COMMISSIONER RISEN: Your mother
3 was a secretary and Ruckert was an electrician?

4 INMATE TRIPP: Yes.

5 PRESIDING COMMISSIONER RISEN: Says you were
6 close to your stepfather despite the fact he once
7 attempted to molest you once you were seven years
8 of age.

9 INMATE TRIPP: That part I disagree because
10 it wasn't a once thing. It was from seven all my
11 life until I decided I wasn't sleeping with him.
12 It was a molest thing when I was younger and as I
13 matured, it became a money exchange thing. For me.

14 PRESIDING COMMISSIONER RISEN: You received
15 average grades in school. Not a behavioral problem
16 until you met Hilton Tripp. That was your husband,
17 the guy you married.

18 INMATE TRIPP: Yes, Sir.

19 PRESIDING COMMISSIONER RISEN: And that
20 would be in the 10th grade?

21 INMATE TRIPP: Yeah, it was the 10th grade.

22 PRESIDING COMMISSIONER RISEN: What kind of
23 an influence did he have on you?

24 INMATE TRIPP: He was the one who was saving
25 me from my stepdad. That's why I ran away so much.

26 PRESIDING COMMISSIONER RISEN: Okay.

27 INMATE TRIPP: Because he was going to

1 protect me and save me.

2 PRESIDING COMMISSIONER RISEN: And it says
3 you graduated from a continuation high school.

4 INMATE TRIPP: Yes, Sir.

5 PRESIDING COMMISSIONER RISEN: Now, you
6 didn't want to marry Tripp?

7 INMATE TRIPP: When I was pregnant, I didn't
8 want to get -- Getting married wasn't something I
9 really wanted.

10 PRESIDING COMMISSIONER RISEN: Okay, but
11 your parents --

12 INMATE TRIPP: My stepdad did and one of my
13 grandmothers. They said it would be wise because I
14 was pregnant and I should do the right thing and
15 not have the baby out of --

16 PRESIDING COMMISSIONER RISEN: And Tripp was
17 the father.

18 INMATE TRIPP: Tripp was the father.

19 PRESIDING COMMISSIONER RISEN: Okay, then
20 your mother adopted the child.

21 INMATE TRIPP: Yes, Sir.

22 PRESIDING COMMISSIONER RISEN: And how old
23 is she now?

24 INMATE TRIPP: She's going to be 25 in June.

25 PRESIDING COMMISSIONER RISEN: Any type of
26 work prior to coming to prison?

27 INMATE TRIPP: I had pieces of jobs.

1 **PRESIDING COMMISSIONER RISEN:** How long was
2 the longest time you worked?

3 **INMATE TRIPP:** Probably, like, three months.
4 I was in Texas when I got certified to become a
5 nurse's aide.

6 **PRESIDING COMMISSIONER RISEN:** Okay, how
7 long before the commitment offense were you in
8 Texas?

9 **INMATE TRIPP:** I went to Texas the summer of
10 '77. Because I had just graduated. That's when I
11 first met my (inaudible). And I had to get a job
12 to come back to California.

13 **PRESIDING COMMISSIONER RISEN:** And you
14 worked about three months doing what?

15 **INMATE TRIPP:** I was working in a nursing
16 home. Trying to become a nurse. It was a class
17 where you worked. You could become a nurse's aide
18 as you were working and you took the schooling and
19 the training at the same time.

20 **PRESIDING COMMISSIONER RISEN:** Okay, now,
21 did you have a problem with drugs at all on the
22 street?

23 **INMATE TRIPP:** I consider me an addict, an
24 alcoholic, only because of the way I consumed
25 alcohol and drugs. When I did them, I consumed a
26 lot of them. I didn't just --

27 **PRESIDING COMMISSIONER RISEN:** Okay. What

1 age did you start using drugs?

2 **INMATE TRIPP:** I started smoking weed in the
3 ninth grade.

4 **PRESIDING COMMISSIONER RISEN:** And it just
5 went on from there?

6 **INMATE TRIPP:** Yeah. Most of my stuff was I
7 smoked marijuana and I drank hard liquor. Once in
8 a while, I would do acid. Once in a while, I'd do
9 speed. Once in a while, but --

10 **PRESIDING COMMISSIONER RISEN:** Okay. And at
11 this point, we'll go to the next part of the
12 hearing, post-conviction factors.

13 **DEPUTY COMMISSIONER MAY:** Thank you, Mr.
14 Chairman. At the last hearing -- That was November
15 the 6th, 2002. Inmate was granted, but the
16 Governor, on April 4th, 2003, reversed the grant
17 and with the following decision:

18 "According to the Probation Officer's
19 report, Tamron Carpenter and her
20 older sister were schedule to testify
21 in a criminal proceeding that William
22 Ruckert had sexually abused them.
23 Mr. Ruckert offered \$10,000 to his
24 stepdaughter BranDee Tripp, her
25 husband Hilton, and her husband's
26 friend to kill the girls before they
27 could testify. The originally agreed

1 to kidnap and murder Tamron's older
2 sister. When that plan failed, they
3 plotted to kidnap the 10 year old
4 Tamron. Ms. Tripp, age 20, was a
5 family friend of the young victim.
6 In fact, Mrs. Tripp was the only
7 person Tamron's mother trusted to
8 take Tamron places. Ms. Tripp
9 arranged to take Tamron swimming on
10 July the 8th, 1979. According to the
11 plans Tripp sent Tamron to the store
12 alone. Mr. Tripp and his friend met
13 Tamron there, offering to give her a
14 ride back. This provided them the
15 opportunity to kidnap Tamron, taking
16 her to the beach, where Mrs. Tripp
17 and her husband lived. Ms. Tripp's
18 husband and his friend tied Tamron
19 up, dug a shallow grave, and then
20 strangled and buried her. Ms. Tripp
21 pled to second degree murder on the
22 condition that she testify against
23 her stepfather, William Ruckert. She
24 was sentenced to 15 years to live.
25 While incarcerated, Mrs. Tripp has
26 participated in many self-help and
27 therapy programs, including Alcohol

1 and Narcotic Anonymous, 12 Step
2 program, various psychotherapy
3 groups, anger management programs,
4 and Victim Awareness Programs. She
5 has also been involved with a variety
6 of organizations and activities. She
7 has completed her GED and taken some
8 additional classes. All this is
9 commendable. The crime she
10 facilitated, however, was
11 particularly heinous, the planned
12 killing of an innocent child to
13 prevent her from testifying against a
14 serial child abuser. It was clear
15 that Tamron's mother was concerned
16 about her child's safety. Mrs. Tripp
17 was the only person she trusted to
18 take care of Tamron. Mrs. Tripp
19 abused the trust of not only Tamron's
20 mother, but also Tamron herself.
21 Mrs. Tripp arranged to send Tamron to
22 the store by herself for the very
23 purpose of facilitating the
24 kidnapping and subsequent murder.
25 Mrs. Tripp claims that she only
26 agreed to arrange for the kidnapping
27 on the condition that no one was to

1 be hurt. This is simply not credible
2 and is inconsistent with the facts.
3 Mrs. Tripp claimed she has accepted
4 responsibility for the crime and
5 realizes that her cooperation made
6 the victim more accessible to being
7 kidnapped and murdered. I am not
8 convinced, however, that Ms. Tripp is
9 not trying to minimize her
10 culpability. She says that the plan
11 had been to kidnap Tamron, collect
12 the money, and doublecross her
13 stepfather. But she had to realize
14 that Mr. Ruckert would not agree to
15 pay anything while Tamron's sister
16 could still testify against him.
17 Furthermore, it is not credible that
18 she did not know that Tamron would be
19 killed. Indeed, in her 1999
20 psychiatric evaluation, Mrs. Tripp
21 admits that she and her husband
22 discussed killing both Tamron and her
23 sister. Moreover, Mrs. Tripp and her
24 husband lived in a tent. Mrs. Tripp
25 had to know that they could not keep
26 Tamron hidden there very long. The
27 planned kidnap and murder of a 10

1 year old child is atrocious in and of
2 itself, but Mrs. Tripp's motive is
3 especially heinous. She aided in the
4 murder of profit to prevent the
5 victim from testifying and to allow a
6 serial child abuser to continue
7 abusing other innocent children.
8 These factors are far beyond the
9 minimum required to support a
10 conviction of second degree murder.
11 The Arroyo Grande Police Department
12 recommended against parole due to
13 Mrs. Tripp's active participation in
14 this heinous crime. I agree. The
15 calculated murder for hire,
16 demonstrating especially callous
17 disregard for human suffering,
18 indicates that Mrs. Tripp is not
19 suitable for parole at this time.
20 Additionally, I note that one factor
21 the Board relied upon in granting
22 parole was that Mrs. Tripp had no
23 juvenile record. I question,
24 however, Mrs. Tripp's truthfulness
25 regarding her discussion of her
26 juvenile history. During the
27 psychological evaluation in 1985,

1 1991, and 1993, she admitted to
2 having had behavior problems,
3 shoplifting, stealing cars, and
4 stealing from her parents. Yet at
5 the 2002 hearing, she indicates that
6 she had no prior criminal activities
7 before the murder. Mrs. Tripp has
8 demonstrated a very unstable
9 lifestyle. She was expelled from
10 school in the 10th grade. She is an
11 alcoholic and (inaudible) from
12 cocaine beginning as a teenager.
13 Prior to the murder, she was living
14 in a tent and stealing for food. In
15 prison, she accumulated 21
16 disciplinary reports, the most recent
17 in 1999. Over the years, psychiatric
18 evaluations have diagnosed her as
19 polysubstance dependent, having an
20 anti-social personality disorder, and
21 a quick and violent temper. Ms.
22 Tripp's role in this murder for hire
23 showed an exceptional callousness and
24 indifference to human life. In view
25 of her unstable history and
26 lifestyle, Mrs. Tripp must
27 demonstrate over a prolonged period

1 that the gains she has begun to make
2 in a controlled institutional setting
3 can be maintained upon release. I am
4 also concerned that Mrs. Tripp lacks
5 realistic parole plans. She has a
6 sparse employment history before
7 incarceration and does not appear to
8 have any credible employment
9 prospects if paroled. Instead, she
10 intends to rely on a trust fund and
11 live with her mother. In this
12 unstructured environment, Mrs. Tripp
13 may lose the gains she has made in
14 prison. Based upon each of the
15 negative factors discussed above, I
16 believe Mrs. Tripp still poses an
17 unreasonable risk of danger to
18 society if paroled at this time.
19 Accordingly, I reverse the Board of
20 Prison Terms' decision to parole Mrs.
21 Tripp."

22 Since her last hearing, she has remained
23 disciplinary free. She has accumulated a total of
24 14 128s, the last being May the 27th, 1999 for
25 excessive property. A total of 11 115s, the last
26 being March the 31st, 1988, Division F. And since
27 the last hearing, she has continued to participate

1 years of incarceration has been
2 difficult with numerous write-ups.
3 However, the inmate has been
4 motivated in her self-discovery and
5 has improved dramatically over the
6 years, to the point where she has
7 matured significantly. The inmate
8 has gained a healthy respect for the
9 rights and privacy of others and
10 appeared to have followed diligently
11 in the rules and regulations here at
12 this institution. The inmate has
13 been able to keep her pathological
14 characteristics in control and she
15 has also attained a certain level of
16 peace and contentment within herself.
17 Her parole plans, though a viable
18 one, may be better improved if
19 certain additional structures are
20 involved, such as a search for higher
21 education in a junior college, or
22 even a college degree. Given her
23 level of high intellectual
24 functioning and, or the possibility
25 of a reentry program that can offer
26 her a better strategy of acclimation
27 back into society. Risk factors, as

1 always, would be if she ever
2 attempted to resort to acts of
3 criminality, though given her level
4 of peace and contentment, I would not
5 suspect that to be the case."

6 With that, I will return to the Chair.

7 **PRESIDING COMMISSIONER RISEN:** Okay.

8 Regarding your parole plans, I'm going to work from
9 your attorney's brief. It indicates that you've
10 been accepted by the Casa Solano, a residential
11 treatment facility in Grover Beach. Is that
12 correct?

13 **INMATE TRIPP:** Yes, Sir.

14 **PRESIDING COMMISSIONER RISEN:** And that's
15 where you were raised, in Grover Beach?

16 **INMATE TRIPP:** Yes, Sir.

17 **PRESIDING COMMISSIONER RISEN:** Your mother
18 also lives near there.

19 **INMATE TRIPP:** Yeah.

20 **ATTORNEY WOODWARD:** And extensive family.

21 **PRESIDING COMMISSIONER RISEN:** Yeah. Also,
22 they provide transportation. Says here, the
23 residents providing transportation, teaching
24 residents necessary life skills. Have you ever had
25 a driver's license?

26 **INMATE TRIPP:** Yeah. I had a driver's
27 license before I got arrested.